IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 389 of 1988

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ? **1 to 5 NO**

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ROSHANBEN AHMED & 4 - Appellant(s)
Versus
NASSIRKHAN HUSEINKHAN PATHAN & 2 - Defendant(s)

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Appearance :
MR PM THAKKAR for Appellant(s) : 1 - 5.
NOTICE SERVED for Respondent : 1,
NOTICE NOT RECD BACK for Respondent : 2,
MR RAJNI H MEHTA for Respondent : 3,

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 28/12/2007

CAV JUDGMENT

1. The appellants, original claimants, have, under section 110-D of the erstwhile Motor Vehicles Act, 1939 ("the Act" for short),

challenged the judgment and award dated 3.7.1984 of Claims Tribunal (Aux.), Junagadh in MACP No.170 of 1982 holding opponents No.1 and 2, jointly and severally, liable to pay Rs.1,30,000/- with interest @ 6% and cost, while rejecting the petition against opponent No.3. The challenge is restricted to exoneration of opponent No.3, the insurance company.

2. The Tribunal has, in the impugned judgment, found that deceased Ahmed Umar met with the fatal accident as a result of bursting of rear tyre of the motorcycle which he was driving by reason of or pursuant to a contract of employment, but the accident could not be attributed to any negligence of the deceased. That opponent No.1 was an employee of the owner, opponent No.2, and opponent No.1 had temporarily employed the deceased to drive the motorcycle and agreed to pay Rs.50/- to the deceased when the accident happened on 8.12.1981 while he was driving back from Dhoraji to Porbandar. The deceased had a valid permanent driving licence and there was no breach of conditions of the insurance policy of the vehicle in question. However, the insurance policy of the motorcycle produced at Exh.50 was an "Act Policy" under which only third party risk was covered and

liability of the insurance company was not extended beyond the statutory liability. Admittedly, additional premium was not paid to provide coverage to driver of the motorcycle. The Tribunal, therefore, could not hold the insurance company liable for payment of compensation.

3. The only argument addressed on behalf of the appellant was that, even though no additional premium was paid for the policy to cover the driver of the vehicle in question, the claimants were entitled to claim compensation from the insurance company by virtue of the provisions of sections 95 and 96 of the Act.

4. Learned counsel Mr.Rajni Mehta, appearing for the insurance company, submitted that the provisions of section 95 of the Act expressly excluded liability in respect of death or bodily injury to an employee except a liability arising under the Workmen's Compensation Act, 1923 particularly when such employee was engaged in driving of the vehicle and the injury was arising out of and in the course of his employment. He relied upon judgment of the Supreme Court in ***Pushpabai Parshottam Udeshi v. Ranjit Ginning & Pressing Co. Pvt. Ltd. [AIR 1977 SC 1735]*** wherein it was held that the words "*third party*" did not

cover all persons except the insured, and the policy under the Act was not required to cover risk to passengers who were not carried for hire or reward.

5. In view of the admitted position on facts and the claim having not been made under the Workmen's Compensation Act, 1923, the insurance policy was not statutorily required to cover the liability in respect of death arising out of and in the course of employment of the deceased employee who was admittedly engaged in driving of the vehicle. Therefore, it cannot be held that the insurance company was liable to pay compensation in case of the claim arising out of the accident in which owner was held to be negligent and to indemnify the owner on the basis that it was a statutory requirement for the insurance company to satisfy the award regardless of its liability being limited by the contract and the conditions of policy. Therefore, appeal fails and accordingly it is dismissed with no order as to costs.

Sd/-

(D.H.Waghela, J.)

(KMG Thilake)